

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

CÉSAR NÁTER-OYOLA,

Plaintiff,

v.

MUNICIPALITY OF ARECIBO, et al.,

Defendants.

Civil No. 07-1294 (JAF)

**OPINION AND ORDER**

Plaintiff, César Náter-Oyola, brings the present action under 42 U.S.C. § 1983 against Defendants, the Municipality of Arecibo ("Arecibo"), Lemuel Soto-Santiago ("Soto"), José Martínez-Benítez, and José Pérez-de-Jesús, in their personal and official capacities, alleging violations of Plaintiffs' rights under the United States Constitution and Puerto Rico law. (Docket No. 1.) Defendants move for summary judgment pursuant to Federal Rule of Civil Procedure 56(c). (Docket No. 46.) Plaintiff opposes (Docket No. 53), and Defendants reply (Docket No. 68).

**I.**

**Factual and Procedural History**

Unless otherwise indicated, we derive the following factual and procedural summary from the parties' motions, exhibits, and statements of uncontested facts. (Docket Nos. 1, 17, 46, 51, 53, 54, 56, 63, 68.)

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1 Plaintiff, an Arecibo resident, has been a non-policymaking  
2 employee of Arecibo since December 16, 1985. From the time of the  
3 events in question to the present, Plaintiff has been a supervisor in  
4 the Public Works Department. His duties generally require him to  
5 supervise a crew of employees.

6 Soto, an Arecibo resident, is a registered voter and affiliate  
7 of the New Progressive Party ("PNP"). He won Arecibo's mayoral  
8 elections in November 2004 and has been mayor of the municipality  
9 since taking office in January 2005. As mayor, Soto delegated his  
10 authority to transfer employees to the Director of Public Works.

11 Martínez-Benítez, an Arecibo resident, was Interim Director of  
12 Public Works until September 30, 2006. Martínez-Benítez has been  
13 Plaintiff's supervisor since 2005, although Plaintiff admitted that  
14 his direct supervisor is Roberto Olmos ("Olmos"). Martínez-Benítez is  
15 a registered voter and affiliate of the PNP and was a poll watcher  
16 for the party in the 1988, 1992, 1996, and 2004 elections.

17 Pérez-de-Jesús, an Arecibo resident, has held several employment  
18 positions in Arecibo since June 2006. In September 2006, he replaced  
19 Martínez-Benítez as Interim Director of Public Works. He subsequently  
20 became Director of Environmental Control, Special Aide to the Mini-  
21 City Hall of Sabana Hoyos, and finally Supervisor Brigade at  
22 Environmental Control. He is a registered voter and affiliate of the  
23 PNP. He was a poll watcher in the 2004 and 2008 elections.

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1 Plaintiff is an active member of the Popular Democratic Party  
2 ("PPD") and has worked at the Electoral College since he was eighteen  
3 years old. He displays PPD signs on his lawn. Plaintiff claims that  
4 Soto and Martínez-Benítez visited him at home twice during the 2004  
5 electoral season as part of Soto's routine campaign visits and that  
6 Plaintiff told them during the visits that he is a member of the PPD.  
7 He also alleges that employees would often talk about politics and  
8 their political affiliation while at work. For example, Plaintiff  
9 states that he would have political discussions with Martínez-  
10 Benítez, and told him specifically that he was a PPD affiliate.

11 Until 2005, Plaintiff worked as a supervisor of the Municipal  
12 Aqueduct employees. On September 13, 2005, Plaintiff received a  
13 letter stating that his services as supervisor were needed at García  
14 Park and that, while there, he would be under the supervision of  
15 Efraín González. (Docket Nos. 46-5, 51-4.) García Park is a  
16 recreational park in Arecibo. The transfer letter was sent by  
17 Martínez-Benítez, with copies forwarded to Soto and Victor Raíces,  
18 Arecibo's Human Resources Director. (Id.) Martínez-Benítez claims  
19 that he transferred Plaintiff because González requested a  
20 trustworthy supervisor who could stay at the park while González ran  
21 errands. From July through September 30, 2006, Plaintiff was the only  
22 supervisor transferred by Martínez-Benítez.

23 Upon receiving the September 13, 2005, letter, Plaintiff asked  
24 Martínez-Benítez whether he was being transferred because he was a

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1 PPD affiliate. Plaintiff alleges that Martínez-Benítez replied that  
2 the instructions to transfer Plaintiff came from Soto. Plaintiff was  
3 transferred the next day. Olmos took over Plaintiff's former duties.

4 Defendants assert that between September 2005 and August 2006,  
5 Plaintiff never requested to meet with Soto or discussed the transfer  
6 with him. Plaintiff claims he spoke about the matter with Soto during  
7 one of Soto's visits to Plaintiff's work area. On August 24, 2006,  
8 Plaintiff sent Soto a letter claiming that there were two secretaries  
9 and two additional supervisors at García Park and that this had left  
10 Plaintiff without duties and had caused him emotional problems.  
11 (Docket Nos. 46-5, 51-4, 56-6.) It also described a visit Soto  
12 allegedly made to García Park, where Soto allegedly asked Plaintiff  
13 and two secretaries to clean the park's bathrooms. (Id.) According to  
14 Soto, he was sick during the time period in which Plaintiff sent this  
15 letter and the matter should have been investigated by the interim  
16 mayor, Ángel Ramos-Lugo.

17 On September 6, 2006, Plaintiff's counsel sent Soto and  
18 Martínez-Benítez a certified letter informing them that Plaintiff had  
19 been unable to perform his duties as supervisor since his transfer to  
20 García Park. (Docket Nos. 56-7, 63-7.) The letter also claimed that  
21 by allowing this, Soto was ratifying the alleged political  
22 persecution against Plaintiff. (Id.) The letter requested that Soto  
23 rectify the situation and return Plaintiff's supervisory duties.  
24 (Id.) The letter added that the document was meant as an

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1 extrajudicial claim to extend the statute of limitations period, in  
2 accordance with Article 1873 of the Puerto Rico Civil Code. (Id.)

3 The same day, Plaintiff received a letter from Pérez-de-Jesús  
4 transferring Plaintiff to work as a supervisor for the construction  
5 crew of the Public Works Department "due to service needs." (Docket  
6 Nos. 46-5, 51-4.) Pérez-de-Jesús claims that he had been informed in  
7 a meeting that the task of overseeing García Park was going to be  
8 transferred to the Recreation and Sports Department and this meant  
9 Plaintiff could no longer work at García Park as an employee of  
10 Public Works. When Plaintiff transferred to the construction crew, he  
11 complained to Pérez-de-Jesús that the only space available on the  
12 crew's truck was the driver's seat and that he would, therefore, only  
13 be able to work there as a chauffeur.

14 On September 22, 2006, Pérez-de-Jesús again transferred  
15 Plaintiff via letter, this time to work as a supervisor with the  
16 electrician brigade of the Public Works Department. (Id.) According  
17 to Pérez-de-Jesús, he transferred Plaintiff because Plaintiff had  
18 complained about his transfer to the construction crew and there was  
19 an opening in the electrician crew for a supervisor. Before  
20 transferring Plaintiff, however, Pérez-de-Jesús did not ask Plaintiff  
21 whether he had experience or training as an electrician. As with his  
22 prior transfer, Plaintiff complained to Pérez-de-Jesús that there was  
23 no space for him in the crew's truck.

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1 Plaintiff claims that he has not been assigned duties as far  
2 back as February 2005. However, he has not lost his job and his  
3 salary has not changed.

4 Plaintiff filed the present action in federal district court on  
5 April 5, 2007. (Docket No. 1.) Defendants moved for summary judgment  
6 on March 17, 2009. (Docket No. 46.) Plaintiff opposed on April 17,  
7 2009 (Docket No. 53), and Defendant replied on May 21, 2009 (Docket  
8 No. 68).

## 9 II.

### 10 Standard For Summary Judgment Under Rule 56(c)

11 We grant a motion for summary judgment "if the pleadings, the  
12 discovery and disclosure materials on file, and any affidavits show  
13 that there is no genuine issue as to any material fact and the movant  
14 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).  
15 A factual dispute is "genuine" if it could be resolved in favor of  
16 either party, and "material" if it potentially affects the outcome of  
17 the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st  
18 Cir. 2004).

19 The moving party carries the burden of establishing that there  
20 is no genuine issue as to any material fact; however, the burden "may  
21 be discharged by showing that there is an absence of evidence to  
22 support the nonmoving party's case." Celotex Corp. v. Catrett, 477

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1 U.S. 317, 325, 331 (1986). The burden has two components: (1) an  
2 initial burden of production, which shifts to the nonmoving party if  
3 satisfied by the moving party; and (2) an ultimate burden of  
4 persuasion, which always remains on the moving party. Id. at 331.

5 In evaluating a motion for summary judgment, we view the record  
6 in the light most favorable to the non-moving party. Adickes v. S.H.  
7 Kress & Co., 398 U.S. 144, 157 (1970). However, the non-moving party  
8 "may not rely merely on allegations or denials in its own pleading;  
9 rather, its response must . . . set out specific facts showing a  
10 genuine issue for trial." Fed. R. Civ. P. 56(e) (2).

### 11 **III.**

#### 12 **Analysis**

13 Defendants argue that they are entitled to summary judgment  
14 because (1) Plaintiff has failed to establish a cause of action under  
15 the Fifth, Ninth, Fourteenth, and Fifteenth Amendments, (2) Plaintiff  
16 has failed to establish his prima-facie case under the First  
17 Amendment because he has not shown that Defendants knew his political  
18 affiliation or that it motivated the transfers, (3) Plaintiff's  
19 claims for alleged acts committed between February 2005 and September  
20 13, 2005, are time-barred, (4) there is no basis for municipal  
21 liability, and (4) we should decline to exercise supplemental  
22 jurisdiction over the claims under Puerto Rico law. (Docket No. 46.)

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1 Plaintiff voluntarily dismisses his claims under the Fifth, Ninth,  
2 Fourteenth, and Fifteenth Amendments. (Docket No. 53.)

3 **A. Political Discrimination Under the First Amendment**

4 The First Amendment protects non-policymaking public employees  
5 from adverse employment actions based on their non-conforming  
6 political opinions. See Padilla-García v. Guillermo Rodríguez, 212  
7 F.3d 69, 74 (1st Cir. 2000); see also Rutan v. Republican Party of  
8 Ill., 497 U.S. 62, 75-76 (1990). In Mount Healthy City School  
9 District Board of Education v. Doyle ("Mount Healthy"), the Supreme  
10 Court established a two-part burden-shifting framework for analyzing  
11 free-speech claims, applicable in the context of political-  
12 discrimination lawsuits. Padilla-García, 212 F.3d at 74. "First, the  
13 plaintiff must show that [he] engaged in constitutionally protected  
14 conduct, and that this conduct was a substantial or motivating factor  
15 for the adverse employment decision. If [he] does so, then the  
16 defendant is given the opportunity to establish that it would have  
17 taken the same action regardless of the plaintiff's political beliefs  
18 . . . ." Id. (citing 429 U.S. 274, 287 (1977)). "[A] plaintiff may  
19 not prevail simply by asserting an inequity and tacking on the self-  
20 serving conclusion that the defendant was motivated by a  
21 discriminatory animus." Correa-Martínez v. Arrillaga-Belendez, 903  
22 F.2d 49, 53 (1st Cir. 1990).

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1 Plaintiff has established that he exercised First Amendment  
2 rights and has generated an issue of fact as to the existence of an  
3 adverse employment action. Defendants transferred Plaintiff on three  
4 occasions to positions in which Plaintiff claims he had essentially  
5 no duties. Plaintiff has shown that he belongs to a political party  
6 in opposition to the one to which Defendants belong and he alleges  
7 that Defendants were aware of this affiliation.

8 Plaintiff's argument falls short, however, because he has failed  
9 to adduce any evidence, direct or circumstantial, that his political  
10 affiliation was a substantial or motivating factor behind the  
11 transfers. Plaintiff's brief in opposition to summary judgment does  
12 not even attempt to state a theory of causation, let alone point to  
13 facts that would support such an inference. (See Docket No. 53.) He  
14 states only that his transfers were "discriminatory because he was  
15 sent to a workplace without duties." (Id.) Without any evidence to  
16 support his assertion that the transfers were motivated by  
17 discriminatory animus, Plaintiff fails to make out a prima-facie case  
18 for his First Amendment claim. See Welch v. Ciampa, 542 F.3d 927, 940  
19 (1st Cir. 2008) ("'[T]he mere fact that an adverse action was taken  
20 after an employee exercises First Amendment rights is not enough by  
21 itself to establish a prima facie case.'" (quoting Acosta-Orozco v.  
22 Rodríguez-de-Rivera, 132 F.3d 97, 101 (1st Cir. 1997)); Correa-  
23 Martínez, 903 F.2d at 58.

